

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JASON KERNS, ARCHIE KERNS and
MARY ANN KERNS,

Plaintiffs,

vs.

No. CIV 07-0771 JB/ACT

BOARD OF COMMISSIONERS OF
BERNALILLO COUNTY, BERNALILLO COUNTY
SHERIFF DARREN WHITE, in his individual and his
official capacity, BERNALILLO COUNTY SHERIFF'S
DETECTIVES BRIAN LINDLEY, RALPH GONZALES, and
JAMES HAMSTEN, in their individual capacities, BERNALILLO
COUNTY SHERIFF DEPUTIES LAWRENCE KOREN,
SEAN CONNORS, AARON WRIGHT, TIMOTHY HIX, and
RHONDA MOYA, in their individual capacities, THE CITY OF
ALBUQUERQUE, ALBUQUERQUE POLICE DEPARTMENT
OFFICERS DREW BADER, MATT THOMPSON, RUSSELL CARTER,
ROBERT JOHNSTON and JAMES MONTOYA,
in their individual capacities, METROPOLITAN FORENSIC
SCIENCE CENTER FIREARM AND TOOL MARK EXAMINER
MIKE HAAG, in his individual capacity, and JOHN DOES 1-10,
in their individual capacities,

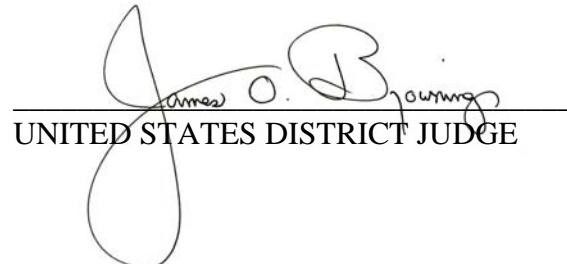
Defendants.

ORDER

THIS MATTER comes before the Court on the City Defendants Drew Bader, Matthew Thompson, and Russell Carter's Motion for Summary Judgment and Memorandum in Support, Requesting Dismissal of Counts I, X, and XIII of Plaintiffs' First Amended Complaint [Doc. 5], filed February 17, 2009 (Doc. 117). The primary issue is whether Defendants Drew Bader, Matthew Thompson, and Russell Carter are entitled to qualified immunity in this case. The Court held a hearing on August 31, 2009. For reasons stated on the record, and for further reasons consistent

with those already stated, the Court will deny the motion.¹

IT IS ORDERED that the City Defendants Drew Bader, Matthew Thompson, and Russell Carter's Motion for Summary Judgment and Memorandum in Support, Requesting Dismissal of Counts I, X, and XIII of Plaintiffs' First Amended Complaint [Doc. 5] is denied.



UNITED STATES DISTRICT JUDGE

A handwritten signature of "James O. Bowering" is written over a horizontal line. Below the line, the words "UNITED STATES DISTRICT JUDGE" are printed in capital letters.

Counsel:

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Bernalillo County, Bernalillo County Sheriff Darren
White, Bernalillo County Sheriff's Detectives Brian Lindley,
Ralph Gonzales, James Hamsten, Bernalillo County
Sheriff's Deputies Lawrence Koren, Sean Connors, Aaron
Wright, Timothy Hix, and Rhonda Moya.*

¹ This Order disposes of the motion at issue. The Court will, however, at a later date issue an opinion more fully detailing its rationale for this decision.

Stephanie M. Griffin
Assistant City Attorney
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Albuquerque, New Mexico

*Attorneys for the Defendants The City of Albuquerque,
Albuquerque Police Department Officers Drew Baden,
Matt Thompson, Russell Carter, Robert Johnston,
James Montoya, and Metropolitan Forensic Science
Center Firearm and Tool Mark Examiner Mike Haag.*